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In re Application of :
SAUSSE et al :
Application No.: 10/540,375 < :
PCT No.: PCT/IB2002/003589 :
Int. Filing Date: 05 September 2002 : DECISION
Priority Date: None — :
Attorney's Docket No.: 930-99-002 :
For: TURBOCHARGER COMPRISING A :
VARIABLE NOZZLE DEVICE :
:

This decision is in response to the papers submitted via facsimile on 02 May 2006.

BACKGROUND

On 04 March 2005, applicants filed via facsimile papers to enter the national stage of PCT/IB2002/003589. However, the transmittal letter indicated that the international application was PCT/US2002/003589. All other indications show that the papers were intended as the national stage of PCT/IB2002/003589. The papers were processed as the national stage of PCT/US2002/003589 and given U.S. application No. 10/528,857. Fees were charged to counsel's Deposit Account No. 01-1125 as authorized.

On 24 June 2005, applicants filed the same papers as filed 04 March 2006 using Express Mail service. These papers were processed as the national stage of PCT/IB2002/003589 despite the indication on the transmittal letter that the international application number was PCT/US2002/003589. The U.S. application number was 10/540,375.

On 02 May 2006, after a suggestion by the undersigned, applicants submitted a petition to amend the transmittal letter pursuant to 37 CFR 1.182.

DISCUSSION

Petition to Amend Transmittal Letter

Applicants request to amend "the National Stage request filed via facsimile in the above-referenced case on March 4, 2005." Applicants state that they "inadvertently

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referred to the priority International Application No. as "PCT/US02/03589." The correct International Application No. is PCT/IB02/03589, as is also indicated on the attachment."

A review of all papers filed show that the application was clearly intended to be the national stage of PCT/IB2002/003589, not PCT/US2002/003589. The title, international filing date, and international papers correspond to PCT/IB2002/003589. Only the country code is incorrect.

The \$400.00 petition fee has been charged to Deposit Account No. 01-1125 as authorized. This is sufficient for a grantable petition.

Duplicate Applications

As previously noted, the papers filed 04 March 2004 were intended to be filed as the national stage application of PCT/IB2002/003589, however, they were processed as the national stage of PCT/US2002/003589 due to the error on the transmittal letter. The duplicate papers filed 24 June 2005 were processed as the national stage application of PCT/IB2002/003589.

The end result for an international application designating the United States of America is a single U.S. national stage application. In this case, the papers filed on 04 March 2005 and 24 June 2005 will be merged into one national stage application for PCT/IB2002/003589 and denoted U.S. application No. 10/540,375.

U.S. application No. 10/528,857 will no longer be an active U.S. application. Applicants must use U.S. application No. 10/540,375 for all future correspondence regarding the national stage of PCT/IB2002/003589.

The fees paid in U.S. application No. 10/528,857 have been credited back to Deposit Account No. 01-1125.

Papers Submitted Via Facsimile

The national stage papers submitted 04 March 2006 were submitted via facsimile. A national stage application may not be submitted via facsimile. Section 1893.01(a)(1) of the MPEP states, in part:

Facsimile transmission is not acceptable for submission of the basic national fee and/or the copy of the international application. See 37 CFR 1.6(d). Likewise, the certificate of mailing procedures of 37 CFR 1.8 do not apply to the filing of the copy of the international application and

payment of the basic national fee. See 37 CFR 1.8(a)(2)(i)(F). Applicants cannot pay the basic national fee with a surcharge after the 30 month deadline. Failure to pay the basic national fee within 30 months from the priority date will result in abandonment of the application. The time for payment of the basic fee is not extendable.

In addition, the thirty-month date for entering into the United States for PCT/IB2002/003589 expired on 05 March 2005. As such, the national stage papers filed 24 June 2005 were untimely resulting in the abandonment of the application.

CONCLUSION

Applicants' petition under 37 CFR 1.182 to amend the transmittal letter is hereby **GRANTED**. The subject application is the national stage of PCT/IB2002/003589 filed 05 September 2002.

However, the subject application is **ABANDONED** pursuant to 37 CFR 1.495(b)(2).

If reconsideration of this decision is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Applicants may also wish to consider to revive the above-captioned application pursuant to 37 CFR 1.137(b).

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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